

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ROSEVILLE CITY COUNCIL

In the Matter of City of Roseville and
Davanni's Pizza & Hot Hoagies

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, on April 1, 2008, at the Roseville City Hall, 2660 Civic Center Drive, Roseville, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing dated February 29, 2008. Scott T. Anderson, Eric Quiring and Isaac Kaufman, Ratwik, Roszak & Maloney, P.A., appeared on behalf of the City of Roseville (City). G. M. "Mick" Stenson, President, Davanni's Restaurants, appeared on behalf of Davanni's Pizza & Hot Hoagies. The hearing record closed on April 1, 2008.

NOTICE

This report is a recommendation, not a final decision. The Roseville City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation.¹ Parties should contact William Malinen, Roseville City Manager, 2660 Civic Center Drive, Roseville, MN 55113, 651-792-7663, to learn the procedure for filing exceptions or presenting argument.

STATEMENT OF THE ISSUE

1. Did Davanni's Pizza & Hot Hoagies (Davanni's) sell alcoholic beverages during the suspension of its license?
2. If so, is the City's proposed penalty of \$2000 and a 60-day suspension reasonable?

¹ Roseville City Code § 302.15 C.

The Administrative Law Judge recommends that the Roseville City Council affirm the proposed penalty of \$2000 and the 60-day suspension.

G. M. "Mick Stenson is the President of Davanni's which operates Davanni's Pizza & Hot Hoagies in Roseville (Davanni's). On March 26, 2008, Mr. Stenson and the City Attorney entered into a Stipulation concerning the facts surrounding this matter and agreed that the scope of the hearing would be limited to the appropriate penalty for Davanni's sale of an alcoholic beverage during the suspension of its liquor licensee at its Roseville location. The Stipulation and exhibits referenced therein are incorporated by reference. The facts are briefly summarized in the Findings of Fact.

Based on the record and proceeding herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Davanni's holds an On-Sale 3.2 Malt Liquor License issued by the City. Davanni's liquor license was previously suspended for one day as a result of an earlier liquor code violation for serving alcohol to a minor. On November 2, 2007, the day when the suspension of the liquor license was in effect, a Roseville police officer went to Davanni's in plain clothes and ordered and was served a bottle of beer. Davanni's does not deny that it served alcohol during its license suspension.

2. Pursuant to Section 302.15 A of the Roseville City Code, "the City Council may suspend a license for up to sixty (60) days, may revoke a license and/or may impose a civil fine on a licensee not to exceed two thousand dollars (\$2,000.00) for each violation on a finding that the license holder or its employee has failed to comply with a statute, rule or ordinance relating to alcoholic beverages, non-intoxicating malt liquor or wine." With certain specified exceptions, this is typically the maximum penalty imposed for a violation.

3. Pursuant to Section 302.15 B.2, the presumptive penalty for a second violation within thirty-six months for a violation of the ordinances governing the sale of alcoholic beverages, in instances where the license is not suspended or a related felony was committed, is a \$500 fine and a three-day suspension.²

4. Pursuant to Section 302.15 B. of the Roseville City Code, the presumptive penalty for serving alcohol while the licensee's liquor license is suspended is revocation of the license on the first violation. Davanni's was notified that the Roseville City Council would consider the alleged violation and whether to impose the presumptive penalty at its meeting on February 11, 2008.

² Roseville City Code § 302.15 B. 2.

5. Pursuant to Minnesota Statutes, section 340A.402, a person who has had his liquor license revoked is not eligible to reapply for a liquor license for a period of five years following the revocation.

6. The Roseville City Council met to consider the presumptive penalty at its meeting on February 11, 2008. Jennifer Weinhandl, the manager of Davanni's, appeared on its behalf. She admitted that she had sold alcohol on the day of the suspension. The suspension had been written on the restaurant's planner for the day, but alcohol was not ordinarily sold during the early hours of the day, and the beer had not been removed. She had not remembered that the license was suspended on that day. Ms. Weinhandl apologized for her error. There was also discussion at the Council meeting about Davanni's continued interest in selling beer, and its limited alcohol sales.

7. Some members of the City Council expressed the view that revocation for five years was a disproportionate penalty for the violation, and that the City Council may not have been aware at the time that it enacted the presumptive penalty that the state statute would prevent licensing for five years following revocation. In the course of the discussion, the City Manager recommended a 30- to 60-day suspension and a \$1000 fine.

8. After some discussion, a motion was brought to impose a 30-day suspension and a \$1000 fine, accompanied by a finding that it was not clear that the City Council had been aware when it enacted the presumptive penalty that revocation would prevent Davanni's from holding a liquor license for five years. After more discussion and public comment, the motion was amended to impose a 60-day suspension and a \$2000 fine. The City Council voted (4 ayes; 1 nay) in support of the motion.

9. By letter dated February 13, 2008, Davanni's was sent notice of the penalty and its right to request a hearing. Mr. Stenson filed Davanni's request for hearing on February 21, 2008.

10. At this hearing, Mr. Stenson requested reduction of the imposed suspension and fine. Again, he apologized for Ms. Weinhandl's error, and stressed that Davanni's has instituted new procedures to assure that no such mistake will occur in the future. He requested reduction of the penalty because it is disproportionately high relative to the volume of Davanni's liquor sales. On average, it sells fewer than 4 bottles of beer per day. Its total revenue from the sale of alcohol is approximately \$4500 per year. Thus, the penalty will have a disproportionate effect on Davanni's, beyond the effect that the same penalty would have on a business with higher alcohol sales. Mr. Stenson believed that the City Council had been improperly influenced by the public comments, and that the City Manager's recommendation for a 30-day suspension and \$1000 fine was more appropriate for his business.

11. Although Mr. Stenson's name and address are on the license, the suspension was sent to the restaurant at 1905 West Perimeter Drive, Roseville, MN

55113 and not sent to his address as the license holder. Mr. Stenson did not deny that Davanni's had received notice of the suspension, but he emphasized that he should have been personally received notice of the suspension as the license holder. Had he received notice of the suspension, he would have taken steps to assure that Davanni's fully complied with its terms.

CONCLUSIONS

1. The Administrative Law Judge and the Roseville City Council have jurisdiction in this case.³

2. Davanni's received timely and proper notice of the hearing, and the City has complied with all procedural requirements of statute and rule.⁴

3. The City Council has authority to deny, suspend, or revoke a license and to impose penalties for the violation of applicable statutes and rules. The City may impose a penalty up to a 60-day suspension and a \$2000 fine for any violation of the ordinances governing the sale of alcoholic beverages; the presumptive penalty for violation of an ordinance governing the sale of alcoholic beverages during a suspension of the license is revocation of the license.

4. The City has the burden of proving that the Licensee violated the applicable provisions of state law and city ordinance by a preponderance of the evidence. Davanni's has stipulated that it sold an alcoholic beverage while its license was under suspension. The City's burden of proof has been met.

5. The City has the discretion to impose a lesser sanction rather than to revoke Davanni's liquor license. In this instance, the City Council took into account the nature of the violation and the effect of the proposed penalty and reasonably exercised its discretion to impose a 60-day suspension and \$2000 penalty. It did not abuse its discretion by failing to impose a lower penalty.

6. Any of the foregoing Finding of Facts more properly termed as a Conclusion is hereby adopted as a Conclusion.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the City of Roseville impose a fine of \$2000 and suspend Davanni's license to sell alcoholic beverages for 60 days.

³ Roseville City Code § 302.15 C; Minn. Stat. § 14.55.

⁴ See Minn. Stat. §§ 14.57 – 14.61; Roseville City Code § 302.15 C.

Dated: April 30th, 2008

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER

Administrative Law Judge

Digitally Recorded:

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MEMORANDUM

The Roseville City Code spells out the presumptive penalties for violation of the ordinances governing sale of alcoholic beverages. Davanni's is aware of the ordinances and aware that penalties will be imposed for violations. When faced with the presumptive penalty of license revocation, the City Council appropriately reviewed the facts and the severity of the sanction and exercised its discretion to impose a much less severe penalty. Although Davanni's asserts that the penalty is still too stiff for the size of its business and the volume of its sales of alcoholic beverages, it is apparent that the City Council intends to send a strong signal that it will enforce the ordinances and impose significant penalties.

Davanni's claims that the City Council was unduly influenced by the public testimony of the former mayor who was critical of Davanni's past compliance with the liquor control ordinances. Mr. Stenson questioned whether the public had a right to comment on the proposed penalty. Nothing prohibits the City Council from considering public comment in reaching a decision, so long as it has a reasonable basis for the action that it takes. Although Mr. Stenson notes the critical testimony of the former mayor, one of the City Council members was similarly critical of Davanni's past compliance and argued for the stiffer penalty of revocation. Thus, there is no reason to believe that the City Council was unduly influenced by the public comments. Although the city manager suggested a smaller penalty, the City Council did not abuse its discretion by imposing a penalty that exceeded that recommendation.

There is no inherent right to sell alcoholic beverages or hold a liquor license.⁵ Municipal authorities have broad discretion to determine the manner in which liquor licenses are regulated, and when fines are imposed, the review is limited to whether the City acted capriciously, arbitrarily or oppressively.⁶ There is nothing in this record to show that the City Council failed to take into account the circumstances relevant to Davanni's, including its low volume of liquor sales, nor does the size of Davanni's make the imposed sanction inherently unreasonable. Even though the penalty was greater than the city manager recommended, it was far less severe than the presumptive penalty of revocation.

The City Council fully considered the penalty to be imposed. It reasonably weighed mitigating factors in deciding to reduce the presumptive penalty of revocation to impose a 60-day suspension and \$2000 fine. Although there is nothing to prevent the City Council upon further reflection from taking into account Davanni's request for a lower penalty based on its sales volume, there is no basis to conclude that failure to do so would be an abuse of the City Council's discretion.

⁵ *Sabes v. City of Minneapolis*, 265 Minn. 166, 120 N.W. 2d 871, 875 (Min. 1963).

⁶ *Id.*, *Bourbon Bar & Café Corp. v. City of Saint Paul*, 466 N.W.2d 438 (Minn. App. 1981).

B.J.H.